

a repeat test prior to the lapse of a one-year period. An inmate who refuses to be tested shall be subject to an incident report for refusing an order and will ordinarily be denied participation in a community activity.

(2) A seropositive test result is not sole grounds for denying participation in a community activity. Test results ordinarily must be available prior to releasing an inmate for a furlough or placement in a community-based program. When an inmate requests an emergency furlough, and current (within one year) HIV and HBV antibody test results are not available, the Warden may consider authorizing an escorted trip for the inmate, at government expense.

(h)(1) No later than thirty days prior to release on parole or placement in a community-based program, the Warden shall send a letter to the Chief United States Probation Officer (USPO) in the district where the inmate is being released, advising the USPO of the inmate's positive HIV status. A copy of this letter shall also be forwarded to the Community Corrections Manager. The Community Corrections Manager, in turn, shall notify the Director of the CCC (if applicable). In all instances of notification, precautions shall be taken to ensure that only authorized persons with a legitimate need to know are allowed access to the information.

(2) Prior to an HIV-positive inmate's participation in a community activity (including furloughs), notification of the inmate's infectious status shall be made:

(i) By the Warden to the USPO in the district to be visited, and

(ii) By the Health Service Administrator to the state health department in the state to be visited, when that state requires such notification.

Notification is not necessary for an escorted trip.

(3) Prior to release on parole, completion of sentence, placement in a community-based program, or participation in an unescorted community activity, an HIV-positive inmate shall be strongly encouraged to notify his/her spouse (legal or common-law) or any identified significant others with whom it could be assumed the inmate might

have contact resulting in possible transmission of the virus.

(4) When an inmate is confirmed positive for HIV or HBV, the HSA shall be responsible for notifying the state health departments in the state in which the institution is located and the state in which the inmate is expected to be released, when either state requires such notification. The HSA shall ensure medical staff perform the notification at the time of confirmed positive HIV or HBV antibody tests.

(5) The HSA shall notify the Immigration and Naturalization Service (INS) of any inmate testing positive who is to be released to an INS detainer.

(i) Inmates receiving the HIV or HBV antibody test shall receive pre- and post-test counseling, regardless of the test results.

(j) Health service staff shall clinically evaluate and review each HIV-positive inmate at least once quarterly.

(k) Pharmaceuticals approved by the Food and Drug Administration for use in the treatment of AIDS, HIV-infected, and HBV-infected inmates shall be offered, when indicated, at the institution.

Subpart B—[Reserved]

Subpart C—Administrative Safeguards for Psychiatric Treatment and Medication

SOURCE: 57 FR 53820, Nov. 12, 1992, unless otherwise noted.

§ 549.40 Use of psychotropic medications.

Psychotropic medication is to be used only for a diagnosable psychiatric disorder or symptomatic behavior for which such medication is accepted treatment.

§ 549.41 Voluntary admission and psychotropic medication.

(a) A sentenced inmate may be voluntarily admitted for psychiatric treatment and medication when, in the professional judgment of qualified health personnel, such inmate would benefit from such treatment and demonstrates

the ability to give informed consent to such admission. The assessment of the inmate's ability to give informed consent will be documented in the individual's medical record by qualified health personnel.

(b) If an inmate is to receive psychotropic medications voluntarily, his or her informed consent must be obtained, and his or her ability to give such consent must be documented in the medical record by qualified health personnel.

[57 FR 53820, Nov. 12, 1992, as amended at 60 FR 49444, Sept. 25, 1995]

§ 549.42 Involuntary admission.

A court determination is necessary for involuntary hospitalization for psychiatric treatment. A sentenced inmate, not currently committed for psychiatric treatment, who is not able or willing to voluntarily consent either to psychiatric admission or to medication, is subject to judicial involuntary commitment procedures. Even after an inmate is involuntarily committed, staff shall follow the administrative due process procedures specified in § 549.43 of this subpart.

§ 549.43 Involuntary psychiatric treatment and medication.

Title 18 U.S.C. 4241-4247 and federal court decisions require that certain procedures be followed prior to the involuntary administration of psychiatric treatment and medication to persons in the custody of the Attorney General. Court commitment for hospitalization provides the judicial due process hearing, and no further judicial authorization is needed for the admission decision. However, in order to administer treatment or psychotropic medication on an involuntary basis, further administrative due process procedures, as specified in this section, must be provided to the inmate. Except as provided for in paragraph (b) of this section, the procedures outlined herein must be followed after a person is committed for hospitalization and prior to administering involuntary treatment, including medication.

(a) *Procedures.* When an inmate will not or cannot provide voluntary written informed consent for psychotropic medication, the inmate will be sched-

uled for an administrative hearing. Absent an emergency situation, the inmate will not be medicated prior to the hearing. In regard to the hearing, the inmate will be given the following procedural safeguards:

(1) Staff shall provide 24-hour advance written notice of the date, time, place, and purpose of the hearing, including the reasons for the medication proposal.

(2) Staff shall inform the inmate of the right to appear at the hearing, to present evidence, to have a staff representative, to request witnesses, and to request that witnesses be questioned by the staff representative or by the person conducting the hearing. If the inmate does not request a staff representative, or requests a staff representative with insufficient experience or education, the institution mental health division administrator shall appoint a staff representative. Witnesses should be called if they have information relevant to the inmate's mental condition and/or need for medication, and if they are reasonably available. Witnesses who only have repetitive information need not be called.

(3) The hearing is to be conducted by a psychiatrist who is not currently involved in the diagnosis or treatment of the inmate.

(4) The treating/evaluating psychiatrist/clinician must be present at the hearing and must present clinical data and background information relative to the need for medication. Members of the treating/evaluating team may also attend the hearing.

(5) The psychiatrist conducting the hearing shall determine whether treatment or psychotropic medication is necessary in order to attempt to make the inmate competent for trial or is necessary because the inmate is dangerous to self or others, is gravely disabled, or is unable to function in the open population of a mental health referral center or a regular prison. The psychiatrist shall prepare a written report regarding the decision.

(6) The inmate shall be given a copy of the report and shall be advised that he or she may submit an appeal to the institution mental health division administrator regarding the decision